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C.F-1087

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No. 464 /2002

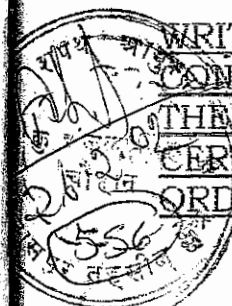
PETITIONER : Shiv Kumar,
S/o Jagat Ram,
Aged about 35 years,
Up-Sarpanch,
Gram Panchayat Bija Tarai,
R/o Village- Bija Tarai,
P.O. Bija Tarai, Tehsil-Mungeli,
Bilaspur(C.G.)

- Versus-

RESPONDENTS : 1. ✓ State of Chhattisgarh,
Though Secretary,
Department of Panchayat,
Mantralay, Shastri Chowk,
Raipur.

P.R. No. 463/02
Filed by Shri K. V. Bhasin
dated 2.6.02

2. Additional Collector,
Bilaspur (C.G.)
3. ✓ Shri Pawan Kumar,
S/o Kiranta Satnami,
Aged about 35 years,
Sarpanch (removed)
R/o Bija Tarai, Mungeli,
District-Bilaspur.



WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN
THE NATURE OF MANDAMUS, PROHIBITION,
CERTIORARI ETC. OR ANY OTHER DIRECTION OR
ORDER TO DO JUSTICE IN THE MATTER.

Details of the petition.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No:464 of 2002

Shiv Kumar

Vs.

State of Chhattisgarh & others

ORDER

Post for 6-5-2003

**Sd/-
Fakhruddin
Judge**

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.No.464 of 2002

Shiv Kumar

Vs.

State of Chhattisgarh & others

Present: Hon'ble Shri Justice Fakhruddin

Shri Prashant Jaiswal with Shri Vinay Pandey, learned counsel for the petitioner.

Shri Ayaz Naved, Panel Lawyer for the State/Respondents no.1 and 2.

Shri M.D. Dhote with Vinod Tekam, counsel for the respondent No.3.

ORDER

By this writ petition filed under Article 226/27 of the Constitution of India, the petitioner prays for quashing of the order dated 30.1.2002 (Annexure P-3) passed by the Additional Collector, District Bilaspur.

2. Briefly stated the facts of the case are that the petitioner, who is the Up-Sarpanch of Gram Panchayat Bija Tarai, has filed this writ petition on the ground that against respondent No.3 Pawan Kumar, Sarpanch no confidence motion was validly passed on 9.3.2001 and accordingly he was removed from the office.

3. It is submitted that no confidence motion duly supported by 1/3rd members was moved by Pandey. The

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total strength of the gram Panchayat was 16 including the Sarpanch. In the meeting convened, 16 persons including Sarpanch and Up-Sarpanch were present and voting. Out of 16 members, 11 indicated their intention for the motion and 5 persons cast their votes against the said motion.

4. The proceedings of the record have been filed vide Annexure P-1. Column 3 of Annexure P-1 states that since more than 2/3rd votes have been cast in favour of the no confidence motion, resolution is passed. This resolution (Annexure P-1) was challenged by respondent No. 1 Pawan Kumar before the Additional Collector.

5. Dispute was referred under section 21 (4) of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993. The Additional Collector, in compliance of this Court order dated 3.1.2002 (Annexure P-2), passed the order dated 3.1.2002 (Annexure P-3) and held that the resolution has been passed by 11 members which is less than 3/4th members, and requirement thereof under section 21 (1) Panchayat Raj Adhiniyam was not complied with and as such, the resolution was not validly passed. It was noted that out of 16 votes, 3/4th of it would be 12 votes and since 12 votes have not been cast for passing the resolution, it was not validly passed.

6. The petitioner who is Up-Sarpanch has filed this petition challenging the order passed by the Additional

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Collector (Annexure P-3). He submits that the resolution has been passed in accordance with law and order of Additional Collector setting aside the said resolution is legal and contrary to law.

7. Section 21 of the M.P. Panchayat Raj Addhikariyam, 1993 deals with no confidence motion against the Sarpanch and Up-Sarpanch of Gram Panchayat. Section 21 is relevant and quoted herein below :-

"21. No-confidence motion against Sarpanch and Up-Sarpanch. - (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the panchas present and voting and such majority is more than two third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith.

(2) Notwithstanding anything contained in this Act or the rules made there-under a Sarpanch or an Up-Sarpanch shall not preside over a meeting in which a motion of no confidence is discussed against him. Such meeting shall be convened in such manner as may be prescribed and shall be presided over by an officer of the Government as the Prescribed Authority may appoint. The Sarpanch or the Up-Sarpanch, as the case may be, shall have a right to speak at, or otherwise to take part in, the proceeding of the meeting.

(3) No-confidence motion shall not lie against the Sarpanch or Up-Sarpanch or Up-Sarpanch within a period of -

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- (i) one year from the date on which the Sarpanch or Up-Sarpanch enter their respective office;
- (ii) six months preceding the date on which the term of office of the Sarpanch or Up-Sarpanch, as the case may be, expires;
- (iii) one year from the date on which previous motion of no-confidence was rejected.

{(4) If the Sarpanch or the Upsarpanch, as the case may be, desires to challenge the validity of the motion carried out under sub-section (1), he shall, within seven days from the date on which such motion was carried, refer the dispute to the Collector who shall decide it, as far as possible, within thirty days from the date on which it was received by him, and his decision shall be final.]”

8. A perusal of sub-section 2 of section 21 shows that a Sarpanch or Up-Sarpanch shall not preside over the meeting in which motion of confidence is discussed against him. However, a Sarpanch/Up-Sarpanch shall have right to speak at or otherwise to take part in proceedings of the meeting. Here in the present case, the Sarpanch against whom the no-confidence motion has been passed took partⁱⁿ the proceedings and cast his vote.

9. Certain rules have been framed by the State of Madhya Pradesh and these rules have been adopted by the State of Chhattisgarh as well. Rule 3 of the **M.P. Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha**

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Vice-President Ke Verudh Avishwas Prastav) Niyam 1994

deals with the notice which is relevant and quoted below:-

3. Notice. – (1) Elected members of Gram Panchayat, Janpad Panchayat or Zila Panchayat desiring to move a motion of no confidence motion against the Sarpanch or Up Sarpanch of a Gram Panchayat or President or Vice President of Janpad or Zila Panchayat, as the case may be, shall give a notice thereof to the prescribed authority in the form appended to these rules:

Provided that such notice shall be signed by not less than one third of the total member of elected members of the concerned Panchayat:

Provided further that where the elected members desire to move the motion of no confidence against both the Sarpanch and Up Sarpanch, President and Vice President of Janpad Panchayat or Zila Panchayat, as the case may be, they shall give separate notice.

(2) The prescribed authority on receiving notice under sub-rule (1) shall sign thereon a certificate stating the date on which hour and at which the notice has been given to him and shall acknowledge its receipt.

(3) On receiving the notice under sub-rule (1) the prescribed authority shall satisfy himself about the admissibility of the notice with reference to Section 21(3), 28(3) and 35(3), as the case may be. On being thus satisfied, he shall fix the date, time and place for the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be, which shall not be more than fifteen days from the date of receipt of the said notice. The notice of such meeting specifying the date, time and place thereof shall be caused to be dispatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer of the Janapad or Zila Panchayat,

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as the case may be, to every member of the Panchayat concerned seven days before the meeting.

10. Rule 4 further deals with the appointment of Presiding Officer, which reads as under:

4. Appointment of Presiding Officer.- The Prescribed Authority shall appoint an Officer of the Government under Sub-section (2) of Section 21, sub-section (2) of Section 28, or sub-section (2) of Section 35 to preside over the meeting of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be. For the purpose of considering the no confidence motion against Sarpanch or Up-Sarpanch, a Revenue Officer not below the rank of Naib Tehsildar, against President or Vice President of Janpad Panchayat [Office not below the rank of Deputy Collector] and against President or Vice President of Zila Panchayat the Collector or Additional Collector shall be appointed to preside over such meeting and the prescribed authority shall inform the Secretary of the Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayat as the case may be, and the Collector of the district about such appointment at least 3 days before the date fixed for meeting.

Rule 5 deals with Conduct of meeting which reads as under:

5. Conduct of meeting.- (1) The presiding Officer shall record the attendance of the members of the Panchayat present at the meeting.

1. [x x x]

2. [(3) The Presiding Officer shall ask any of the signatories to the notice to move the motion.]

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(4) After the motion is moved by the mover, he shall first speak on the motion and thereafter other members may, if they so desire, speak on the motion.

(5) On the conclusion of the debate on the motion, the Presiding Officer shall call the members present in the meeting one by one and shall give them ballot paper duly signed by him to indicate its authenticity, to cast his vote for or against the motion. The member who wants to vote in favour of the motion shall affix the symbol '✓' and the member who wants to vote against the motion shall affix the symbol 'X'. After the member has recorded his vote, he shall fold the ballot paper to maintain secrecy and put it in the ballot box kept on the table of the Presiding Officer.

(6) After the voting is over, the Presiding Officer shall take out the ballot papers from the ballot box and sort out the votes for and against the motion. If the number of votes in favour of the motion fulfils the requirement of sub-section (1) of Section 21, sub-section (1) of section 28, or sub-section (1) of Section 35, as the case may be, the Presiding Officer shall declare that the motion of no confidence is passed.

11. Learned counsel for the parties have not disputed the manner in which the meeting was convened, but the question for consideration of the case in hand is as to whether the no confidence has been validly passed or not, in the meeting. There is no dispute that out of total members of 16 including the Sarpanch, 11 members cast their vote in favour of the no confidence motion and 5 members cast their votes against the

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motion. However, Shri Prashant Jayaswal with Shri Vinay Pandey appearing, for the petitioner submitted that the meeting was convened and resolution has been passed in accordance with law, as such respondent no.3 has been removed from the office, but in appeal preferred by respondent no.3, the Collector has not validly passed the order rejecting the resolution dated 09.3.2001. Shri Dhote with Shri Tekam appearing for the respondent No.3 and Shri Naved appearing for the State, on the other hand, contended that it has validly passed.

12. Learned counsel for the respondents relied on a decision reported in 1997 (2) Vidhi Bhasvar, 73 (Satish Patel v. Collector, Jabalpur and others wherein in para, it has been held as under:

"When a motion of no-confidence is moved against a Sarpanch or Up-sarpanch under section 21 of the Act, the resolution of no-confidence can be said to have been passed if the resolution of no-confidence is carried by the required majority as envisaged in sub-section (1) of section 21. Section 21 (1) requires two conditions essentially to be fulfilled; one, the motion of no confidence is passed by the Gram Panchayat by a resolution passed by majority of not less than three-fourth of the Panchas present and voting and second, that such majority is more than two-third of the total number of Panchas constituting the Gram Panchayat for the time being. Therefore, for a valid resolution of no confidence, it has to be seen that the two conditions are fulfilled. If either of the conditions is not fulfilled, the

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motion of no-confidence will not be considered as validly passed as the two conditions are not independent of each other. In order to see that the two conditions are independent the word 'and' is to be read as 'or' both the conditions should themselves be complete and be capable of operating independently. Unless this test is satisfied the conjunction 'and' would have to be read as importing into what follows it from the conditions or consideration set out in first part".

(Emphasis supplied)

Para 7, 8 and 9 are also relevant and quoted below: -

"7. It is well settled that the word 'or' is normally disjunctive and 'and' is conjunctive, but, at times they are read vice versa to give effect to the manifest intention of the Legislature and to avoid unintelligible or absurd result. See The Principles of Statutory interpretation by Justice G.P. Singh, 6th Edition, Page 292. If the word 'and' is read as 'or' which is normally disjunctive and 'and' is normally conjunctive and not read as conjunctive, then two requirements of section 21 (1) of the Act would not be necessary, which is not the intention of the Legislature in the setting of the language which is used in conjunctive sense of the word 'and' subserving the object of the provision. If it is read as 'or' the result would be that the motion of no-confidence would be passed by resolution on any of the conditions fulfilled or by a majority of more than two-third votes in favour of the resolution, which is not the requirement of section 21.

8. In case of Soji Nayak (supra), this Court has taken the view that both the conditions are necessary and section 21 (1) does not confer passing of the resolution by simple majority. Same is the view taken in case of Bechan Ram Paikra (supra).

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9. A Division Bench of this Court in case of *Ramsingh Soni (supra)* while considering the use of a resolution passed under section 18 (2) of C.P. & Berar Panchayat Act, 1946, wherein Gram Panchayat consisted of 14 members and on the date of consideration of motion, only 9 Panchas were present who all voted in favour of the motion of no-confidence, the question for determination was of the construction of the words "carried by a majority of two-third of the Panchas" constitution the Gram Panchayat occurred in section 18 (1) of the Act", the Court calculated two-third number of 14 arithmetically as $9\frac{1}{3}$ and after considering the expression a majority of two-third of the Panchas observed that it would mean $9\frac{1}{3}$ or number greater than $9\frac{1}{3}$ and not less than $9\frac{1}{3}$ and therefore in the very nature of thing a majority of two-third of the Panchas would be constituted by 10 members or more and not by 9 members."

13. A Division Bench of M.P. High Court, ²⁰⁰⁸ also took the same view while quoting section 21 in case of **Surendra Singh v. State of M.P. and others** reported in 1997 1) Vidhi Bhasvar, 15, where it has been held in paragraph 7 and 8 as under :-

"6. Shri R.D. Jain, learned counsel for respondent No. 4, Anandi Bai while supporting the impugned judgment further contended that the provisions are mandatory as held by learned Single Judge in Writ Petition No. 1447 of 1995. Shri Jain contended that so far as this case is concerned, the 'no confidence' resolution, which is said to have been carried, as per own showing of the appellant, does not fulfill the requirement of section 21 of the Act. as much



as, it is not passed by three-fourth of the Panchas present and voting. Section 21 (1) is relevant and is quoted below:-

"21. No confidence motion against Sarpanch or Up-Sarpanch - (1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by a majority of not less than three-fourth of the Panchas present and voting and such majority is more than two-third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith."

7. We find great force in the submission made by counsel for respondents. Without going into the validity of the meeting, in the case it is clear that the no confidence motion has not been passed by three-fourth of the Panchas present and voting. A perusal of Annexure P/2 shows and the admitted position is that there were total 15 voters - one Sarpanch and 14 Panchas. Out of them 11 persons voted in favour of no confidence motion. The appellant, in this appeal, in para 4 also stated that-

"That, on 18.9.1995, all the members of the Gram Panchayat remained present and participated in the proceedings of vote of no confidence, out of 15 members 11 members of the Panchas casted their votes in favour of vote of no confidence."

Where 15 persons are present, three-fourth of Panchas would be 11.25. 11.25 means more than eleven. The requirement of section 21(1) is that resolution is to be passed by not less than three-fourth of the Panchas present and voting. It was therefore required in this case that 12 persons ought to have voted in favour of 'no-confidence motion'. In 1962 MPLJ SN 122 [Ranjit Singh Soni v. Collector Raipur], similar point was involved. It was a

case wherein majority had to be carried by ten and not by nine and half members should vote for the motion to be effective. It was held in this case that-

"that under section 18 (1), if the motion of no-confidence was carried by a majority of two-thirds of the Panchas constituting the Gram Panchayat the Sarpanch was required to resign within three days of the passing of the motion. The two-third number of 14 was arithmetically $9\frac{1}{2}$. Therefore, in the nature of things a majority of two-thirds of the Panchas would be constituted by ten members or more and not by nine members. The motion carried against the petitioner by nine Panchas could not be said to have been carried by a majority of the two-thirds of the Panchas constituting the Gram Panchayat. That being so, the petitioner was not required to resign in consequence of the passing of that motion and the Collector had no jurisdiction to make an order under section 18 (2) for the petitioner's removal. (Petition allowed)"

8. In view of this admitted position, and in view of the proceedings, which have been filed in writ petition, as Annexure P-2, no confidence motion was not carried by 12 Panchas and as such it does not fulfill the requirement under section 21 of the Act. In this view of the matter, so far as this petition is concerned, it is not necessary for us to go into other questions. Accordingly, the appeal fails and is dismissed. In the facts and circumstances, no order as to cost."

14. Learned counsel for the petitioner placed reliance on a decision reported in 1999 (1) M.P.L.J., 621 in case of **Desbraj Singh v. Gram Panchayat, Tilabujurg and others**, in para 9 it has been held as under :-

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"9. Section 21 of the Act deals with the requirements of the no-confidence motion when it is to be treated to have been carried-out. Sub-section (1) of section 21 of the Act is as extracted below :-

"(1) On a motion of no-confidence being passed by the Gram Panchayat by a resolution passed by a majority of not less than three-fourth of the Panchas present and voting and such majority is more than two-third of the total number of Panchas constituting the Gram Panchayat for the time being, the Sarpanch or Up-Sarpanch against whom such motion is passed, shall cease to hold office forthwith."

It provides that the Resolution of the Gram Panchayat must have been passed by a majority of not less than three-fourth of the Panchas present and voting. So the question for consideration is whether on the basis of the above figures what would be the minimum strength by which a motion could be said to have been passed in the present case. The three-fourth of 11 comes to be 8.2. The words used in the provision are "not less than three-fourth of the Panchas present and voting". The presiding officer treated the figure of 8 as sufficient figure for the Resolution of no-confidence to have been passed against the petitioner. The figure 8 is less than three-fourth of 11 Panchas present and voting and therefore, the presiding officer/returning officer has erred in law as the figure 8 is less than three-fourth of 11 Panchas present and voting. The words "not less than" mean it must be three-fourth of the Panchas present

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and voting and no less, which in the present case, must be 9".

15. Learned counsel for the respondents submits that in view of the provision contained in section 21 and the judgments referred above, it is clear that there are two essential requirements which are to be fulfilled, one, the motion of no confidence is passed by the Gram Panchayat by a resolution passed by majority of not less than three fourth of the Panchas present and voting and second that such majority is more than two third of the total number of Panchas constituting the Gram Panchayat. If one requirement is fulfilled and the other is not fulfilled then the motion cannot be said to have been validly passed. In the present case where 16 persons were present, this respondent Pawan Kumar, Sarpanch has also took part in the meeting. Out of 16 members, 11 members indicated their intention in favour of no-confidence motion, which comes below $3/4^{\text{th}}$ majority whereas the required majority should be 12. Since the first requirement itself is not fulfilled, the resolution passed cannot be said to have ^{been} validly passed. Mere compliance of any requirement alone is not enough to pass the resolution. Indeed both requirements are essential and required to be fulfilled for passing of a valid resolution.

16. The petitioner in ground 'C' of the petition has alleged that the Additional Collector has played fraud on his power

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under Section 21 (4) of the Panchayat Raj Adhiniyam, 1993 for political purpose, which is not authorized by law. During course of arguments counsel for the petitioner was repeatedly asked as to what fraud has been played and political purpose, which Additional Collector had played the fraud.

17. Counsel for the petitioner has filed an application on behalf of the petitioner for permission to withdraw the pleading taken in paragraph 6 (C) of the memo of petition. Not opposed by other side. The application is allowed. The amendment be incorporated. However, learned counsel to be careful in future.

18. Learned counsel for the petitioner relied on a judgment reported in 1995 M.P.L.J., 774 Ajit Singh v. Nagar Panchayat, Bhitwarwar and others. This is with reference to section 47 of M.P. Municipal Act. This section required meeting for the purpose under sub-section (2) and if the motion is carried by a majority of two-third of the elected councilors present. That section is entirely different from present one under section 21. Section 47 of the Municipalities Act is also quoted in the aforesaid judgment and it is quite distinct from the present one. Provision of Municipalities Act cannot be applied in the present case where the Panchayat Raj Adhiniyam itself is applicable, the argument is wholly misconceived.

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19. Learned counsel for the petitioner also relied on a judgment reported in 1996 M.P.L.J., 150 State of Madhya Pradesh and others v. Beni Parsed Rathore and another full bench decision referred to paragraph 18. This case has dealt with section 47 of the Municipalities Act and requirement of both sections are totally different. Learned counsel for the petitioner further relied on decision reported in M.P. weekly notes 1997 (1) Short note 195 Shantiram v. Anuvibhagiya Adhikari, Barwani. The full text has not been supplied. It may be noted that section 21 as it stands required that the motion of no confidence has to be carried only by resolution passed by majority of not less than 3/4th Panchas present and voting and more than 2/3rd of the Gram Panchayat for the time being. Needless to say that both conditions have to be fulfilled before such motion can be duly passed.

20. Counsel the petitioner relied on a decision in the case of Shree Bai -v- State of M.P. reported in 1999(1) M.P.L.J. page No. 19 Short Note No. 28, however full text of judgment has been not reported. In the said case, the motion of no confidence was passed against the petitioner-Sarpanch by all 8 members who were present and voted in support of motion of no confidence and the Panchayat consisted of 11 members, the motion of no confidence was held to have been duly passed by majority which was more than 2/3 of total members of the Panchayat. The said judgment is of no assistance to the petitioner as it does not consider the

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requirement of 3/4th Panchas present and voting. This case is distinguishable and is of no assistance of the petitioner, as it has not considered both requirements envisaged under Section 21(1). The case where both the requirements have not been brought to the notice of the Court and have not been considered, that decision suffers from doctrine of sub-silentio and in this connection, it is pertinent to note law laid down in State of U.P. and another -Vs- Synthetics and Chemicals Ltd., and another 1991 Vol.4 SCC 139. Paragraph 41 is relevant and quoted herein below :-

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi v- Gurnam Kaur*. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is

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not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

21. In view of the discussion made hereinabove, the petition is dismissed with costs.

22. Consequently, interim order passed earlier stands vacated.

Sd/-
Fakhruddin
Judge

-5-2003

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